

(FEDERAL MARITIME COMMISSION)
(SERVED AUGUST 31, 1990)
(EXCEPTIONS DUE 9-24-90)
(REPLIES TO EXCEPTIONS DUE 10-16-90)

FEDERAL MARITIME COMMISSION

DOCKET NO. 89-11

AMERICAN STAR LINES, INC.
NATIONAL TRANSATLANTIC LINES OF GREECE S.A.,
AND DIMITRI ANNINOS
POSSIBLE VIOLATIONS OF PASSENGER VESSEL
CERTIFICATION REQUIREMENTS

1. Where a statute and pertinent regulations specifically forbid any person to arrange, offer, advertise or provide passage on a vessel accommodating fifty or more passengers at United States ports without establishing his financial responsibility or posting a bond or other security, and where the facts of record establish that each of the Respondents engaged in the aforementioned activities without satisfying the law's requirements, said Respondents are subject to penalties and to an order to cease and desist.
2. Where the record establishes that the individual Respondent was President of both of the corporate Respondents and ran their day-to-day operations; and where the record also establishes that the individual Respondent not only knew the law's requirements but was involved in similar matters in previous years with other companies; and where the record establishes that the Respondents collected deposits and fares for cruises that were cancelled without making full restitution to the payors of such deposits and fares or to its agent, each of the Respondents is subject to the maximum penalty provided by law, such penalty being \$26,200.

Gerald D. Stoltz for Respondents American Star Lines, Inc., National Transatlantic Lines of Greece, S. A. and Dimitri Anninos.

Seymour Glanzer and *Charles L. Haslup, III*, for the Bureau of Hearing Counsel.

**INITIAL DECISION¹ OF JOSEPH N. INGOLIA,
ADMINISTRATIVE LAW JUDGE**

Preliminary Matters

The Commission instituted this proceeding by Order of Investigation and Hearing ("Order") dated May 8, 1989, to determine whether any or all of the three named Respondents violated section 3(a) of Public Law 89-777, 46 U.S.C. app. 817e ("Statute"), and/or the Commission's regulations at 46 C.F.R. 540.3 ("Regulations") during the period January 7, 1987, to June 29, 1988. If violations are found, the Order also directs that this proceeding shall determine whether and in what amount civil penalties should be assessed and whether a cease and desist order should be issued.

On June 5, 1990, Hearing Counsel served Interrogatories and Requests for Production of Documents on Respondent American Star Lines, Inc. ("ASL"). Receiving no response to that discovery, Hearing Counsel obtained and served a subpoena upon Mr. Dimitri Anninos, President of ASL, on July 10, 1989, directing him to appear for a deposition and to produce certain berthing logs, cash receipts, tickets and other documents related to certain voyages of the *Betsy Ross* scheduled to embark passengers at Ft. Lauderdale during 1988. Mr. Anninos' deposition was taken on August 1, 1989, but most of the documents were not produced.²

¹This decision will become the decision of the Commission in the absence of review thereof by the Commission (Rule 227, Rules of Practice and Procedure, 46 CFR 502.227).

²The Status Report filed by Hearing Counsel on December 29, 1989, contains a more detailed discussion of these matters.

After several more futile attempts to obtain relevant records from Respondents, Hearing Counsel served a Request for Admissions upon Mr. Dimitri Anninos on September 21, 1989. There was no response to that Request.

By Procedural Order dated October 4, 1989, the undersigned scheduled a prehearing conference for October 24, 1989. In addition to the normal mailing of such document, Hearing Counsel transmitted a copy of that Order by facsimile transmission to Respondents' counsel³ on October 4, 1989. One day before the scheduled prehearing conference, Respondents' counsel indicated to the undersigned that he had not received the Procedural Order of October 4, 1989, and, because of other commitments, could not attend the prehearing conference. The prehearing conference was cancelled and Respondents' counsel was advised orally by the undersigned to file a Notice of Appearance and to respond to Hearing Counsel's Request for Admissions no later than November 28, 1989. Neither action was taken.

By Order to Show Cause dated November 30, 1989, the undersigned instructed Respondent to respond to Hearing Counsel's Request for Admissions no later than December 6, 1989, or show cause why the Request for Admissions should not be granted. No response was made to that Order or to the Request for Admissions.

By Procedural Order dated December 11, 1989, the undersigned ordered that the matters set forth in Hearing Counsel's Request for Admissions are deemed admitted. I also directed the parties to file status reports no later than December 31, 1989, indicating, among other things, whether or not a hearing would be necessary. Hearing Counsel filed

³That counsel, Louis Craco, Esq., represented Dimitri Anninos in the deposition taken on August 1, 1989, and ostensibly represented other respondents in the early stages of this proceeding, but did not file a notice of appearance on behalf of any of the respondents.

such a report on December 29, 1989, indicating that the facts available would support findings of violations by all of the Respondents, but that a hearing may be desirable to develop other facts related to the appropriate level of penalties to be assessed. Respondents filed neither a status report nor communications of any kind.

By Procedural Order dated January 5, 1990, Hearing Counsel was directed to present its evidence in writing no later than February 5, 1990. The Order also provided an opportunity for Respondents to contest these matters by written response no later than February 14, 1990, or by indicating their desire to cross-examine Hearing Counsel's witnesses or present witnesses of their own. The undersigned noted that, if Respondent did not respond to that Order, this case would be decided on the basis of the record as of February 14, 1990.

Hearing Counsel filed its direct case on February 5, 1990, consisting of five affidavits and twenty-two numbered exhibits, each sponsored by one or more of the five witnesses submitting affidavits. Respondents submitted neither testimony nor a request for cross examination.

On March 9, 1990, Dimitri Anninos, on his own behalf, and as President of ASL and of National Transatlantic Lines of Greece S.A. filed a written request for an extension of time until March 16, 1990, "to decide whether to contest this matter either by filing a written response or by requesting a hearing."⁴ The request was said to be necessary because Mr. Anninos had recently asked another attorney to review the file "to ascertain whether it would be in Respondents' best interests to contest this matter."⁵ Hearing Counsel did not

⁴Respondents' Request for Extension of Time, March 9, 1990, p. 1.

⁵Id.

oppose this extension and the undersigned granted it "only for the purpose of allowing the Respondent (sic) to ascertain whether or not it wishes to defend."⁶

Respondents chose once again not to defend, but did indicate orally to the undersigned and to Hearing Counsel that they wished to pursue settlement discussions, contingent upon a sale of the vessel *Betsy Ross* which was said to be under negotiation. Respondents followed that oral advice with a motion for extension of time filed on April 5, 1990. Based upon that information, the Commission extended the times for the initial and final decisions in this proceeding to July 5, 1990, and November 5, 1990, respectfully.

The *Betsy Ross* was not sold and, on June 4, 1990, Hearing Counsel advised the undersigned that no settlement had been reached and none appeared imminent. Hearing Counsel then moved for a further extension of the procedural schedule to permit briefing the case to me and to provide sufficient time for writing the initial decision. On June 25, 1990, the Commission further extended the deadline for the initial decision to September 4, 1990, and for the final decision to November 26, 1990.

The evidentiary record consists of the direct case of Hearing Counsel submitted on February 5, 1990, plus the admissions of Respondent Dimitri Anninos contained in Hearing Counsel's Request for Admissions dated September 21, 1989.

Findings of Fact

It should be noted that in addition to the admissions found Hearing Counsel submitted the following in support of its direct case: (1) written exhibits numbered 1

⁶Procedural Order dated March 12, 1990, p. 1.

through 22; and (2) the affidavits of Eric Graves, Jean Cox, Christopher M. Kane, Robert G. Drew and Karl F. Dietzel.

The Finding of Fact ("F.F.") are as follows:

1. ASL was incorporated in Delaware on December 31, 1986, and during the period relevant here, had its principal office at 660 Broadway, New York, New York.⁷ (Exhibit 8, Admissions 1.)

2. National Transatlantic Maritime Lines of Greece S.A. was incorporated in Panama on March 23, 1987, and has its principal office at 41 Akti Miaouli, Piraeus, Greece. The name of this corporation was changed to National Transatlantic Lines of Greece S.A. ("National Transatlantic") on March 31, 1987. (Exhibit 2, p. 60; Admissions 2.)

3. Both ASL and National Transatlantic were incorporated under the direction of Mr. Dimitri Anninos for the purpose of carrying out a business venture which Mr. Anninos had in mind, namely the operation and marketing of a series of cruises on a passenger vessel to be named "*Betsy Ross*." (Admissions 3.)

4. Mr. Dimitri Anninos is the President and Chief Executive Officer of ASL and was running its day-to-day operations during 1987 and early 1988. (Exhibits 2, 8, 15, 19 and 22 and Affidavits of Eric Graves, Christopher Kane and Robert Drew.)

5. ASL represents National Transatlantic in the United States as a general agent. National Transatlantic also uses the trade name "American Star Lines." (Exhibits 8 and 19 and Admissions 4.)

⁷Information received by Hearing Counsel after the close of the record in this proceeding is that ASL no longer maintains an office at that address. Mr. Anninos' home address is set forth at p. 12 of the transcript of deposition as 99 Brookside Drive, Plantome, New York 11030.

6. Mr. Dimitri Anninos also holds himself out as President of National Transatlantic and had authority from that company to execute any documents related to a Certificate (Performance) to cover cruises on the *Betsy Ross*. (Exhibits 8 and 17; Affidavit of Robert G. Drew, p. 4; and Respondents' Request for Extension of Time dated March 9, 1990.)

7. The *Betsy Ross* has berth or stateroom accommodations for more than 300 passengers. (Exhibits 1, p. 52; Exhibit 5, p. 6; Exhibit 8, p. 1; and Admissions 5.)

8. On April 21, 1987, Mr. Dimitri Anninos, on behalf of National Transatlantic, submitted or caused to be submitted to the Federal Maritime Commission, an Application for Certificate of Financial Responsibility for indemnification of passengers for non-performance of cruises scheduled on the *Betsy Ross* beginning in 1988. National Transatlantic was listed on that application as charterer and operator of the *Betsy Ross*. (Exhibits 8 and 17; Admissions 6; and Affidavit of Robert G. Drew, p. 2.)

9. ASL was listed on that Application for Certificate of Financial Responsibility as the "applicant's United States agent or other person authorized to accept legal service in the United States." (Exhibit 8; Admissions 7.)

10. Attached to the Application for Certificate of Financial Responsibility was a projected cruise schedule for the *Betsy Ross* which included cruises scheduled to embark passengers at Ft. Lauderdale, Florida, on February 4, March 3 and March 31, 1988, among other dates. (Affidavit of Robert G. Drew, p. 2; Admissions 8.)

11. No evidence of financial responsibility or bond or other security to indemnify passengers for nonperformance of transportation was ever furnished to the Federal Maritime Commission in connection with the Application for Certificate of Financial

Responsibility to cover proposed voyages of the *Betsy Ross*. (Affidavit of Robert G. Drew, p. 3; Admissions 9.)

12. No Certificate (Performance) was ever issued by the Federal Maritime Commission to National Transatlantic, ASL or Mr. Dimitri Anninos in connection with proposed voyages of the vessel *Betsy Ross*. (Affidavit of Robert G. Drew, p. 4; Admissions 10.)

13. Cruises of the *Betsy Ross*, including those scheduled to embark passengers at Ft. Lauderdale, Florida, were promoted, offered and advertised in a sixty-page brochure that ASL caused to be printed during the spring of 1987. (Exhibit 1; Affidavit of Eric Graves, pp. 1-2; Admissions 12.)

14. The sixty-page brochure contained scheduled sailing dates, itineraries, cruise fares, additional charges, information on booking reservations, deposit requirements, optional land tours and most other details that prospective passengers and travel agents would need to know in order to book passage on the *Betsy Ross*. National Transatlantic Lines of Greece (sic) is identified in the brochure as the company providing the transportation. (Exhibit 1, passim; p. 59.)

15. Between June 1 and July 16, 1987, representatives of ASL hosted approximately twenty-nine receptions in various locations throughout the United States to promote cruises on the *Betsy Ross*. (Exhibit 9; Admissions 13.)

16. Those receptions were targeted primarily at travel agents as indicated by a notice appearing in the May 18, 1987 edition of *Travel Weekly*. (Exhibit 9; Admissions 13.)

17. The first of those receptions took place at Palm Springs, California, on June 1, 1987. Copies of the sixty-page brochure advertising cruises on the *Betsy Ross* first became available shortly before this reception began. (Exhibit 9; Admissions 14.)

18. At those receptions, at least several hundred copies of the sixty-page brochure were distributed to attendees. (Admissions 15.)

19. On June 7, 1987 and July 12, 1987, notices appeared in the *San Francisco Examiner* and the Travel Section of the *New York Times*, respectively, which provided general information to the public on the scheduled cruises of the *Betsy Ross* and offered a free copy of the sixty-page brochure "with three years of itineraries and rates," in return for mailing in the coupon included in the notices. (Exhibits 10, 11; Admissions 16, 17.)

20. On July 17, 1987, Dimitri Anninos, as Chief Executive Officer, American Star Lines, executed a Letter of Agreement with Travel Insights, Ltd. (TIL) under which TIL agreed to promote American Star Lines' "Amazonian" cruise programs, including those scheduled to embark passengers at Ft. Lauderdale, Florida, on February 4, March 3 and March 31, 1988. (Exhibit 2; Affidavit of Eric Graves; and Admissions 18.)

21. Pursuant to that Letter of Agreement, American Star Lines agreed to "reimburse TIL up to \$20,000 advertising and promotional assistance for brochures and mailing . . ." and TIL agreed "to produce and mail approximately 225,000 - 275,000 copies of said brochures" to members of university alumni groups. (Exhibit 2; Affidavit of Eric Graves, p. 4.)

22. By letter dated August 3, 1987, Mr. Dimitri Anninos agreed to increase from \$20,000 to \$25,000 the "Printing Subsidy" set forth in the July 1987 Letter of Agreement with TIL. (Affidavit of Eric Graves, p. 2; Admissions 21.)

23. On July 17, 1987, Rena Frantzis of American Star Lines executed a Confirmation - Group Space Offer with TIL, reserving sixty cabins of various categories on the February 4, 1988, scheduled sailing of the *Betsy Ross*, to be promoted and sold by TIL

in accordance with the Letter of Agreement, also dated July 17, 1987. (Exhibit 3; Affidavit of Eric Graves, p. 2; Admissions 19.)

24. On July 27, 1987, Rena Frantzis of American Star Lines executed a similar Confirmation - Group Space Offer with TIL, reserving sixty cabins of various categories on the March 31, 1988, scheduled sailing of the *Betsy Ross*, to be promoted and sold by TIL in accordance with the July 17, 1987, Letter of Agreement. (Exhibit 4; Affidavit of Eric Graves, pp. 2-3; Admissions 20.)

25. On or about September 9, 1987, by agreement between TIL and ASL, the cabin space previously reserved by TIL for the proposed March 3, 1988 sailing of the *Betsy Ross* was cancelled. (Admissions 24.)

26. On or about August 21, 1987, TIL sent a check to ASL in the amount of \$20,000, representing four deposits of \$5,000 each for the February 4, February 18,⁸ March 17 and March 31, 1988 scheduled sailings of the *Betsy Ross*. (Affidavit of Eric Graves, pp. 3, 4; Admissions 22.)

27. By letter dated August 26, 1987, ASL confirmed receipt of the \$20,000 check from TIL as deposit for the four scheduled cruises. (Admissions 23.)

28. Pursuant to the Letter of Agreement, from and after July 17, 1987, TIL mailed approximately 264,000 4-color brochures to individual members of 12 university alumni associations describing the *Betsy Ross*, providing detailed information on the "Amazonian" cruises, including itineraries and fares, and soliciting deposits from key alumni who were targeted by the universities as those prospects most able to afford the cruises. (Affidavit of Eric Graves, p. 4; Admissions 25 and 26.)

⁸The two cruises on February 18 and March 17, 1988, were scheduled northbound from Manaus, Brazil, and are not within the Commission's jurisdiction for purposes of P.L. 89-777.

29. Exhibit 5 is a representative sample of the brochures mailed to university alumni by TIL. (Affidavit of Eric Graves, p. 4.)

30. On or before December 8, 1987, ASL accepted deposits of \$600 each from Mr. and Mrs. Karl Dietzel and Mr. and Mrs. Robert Hart for the cruise of the *Betsy Ross* scheduled to sail from Ft. Lauderdale, Florida, on March 3, 1988. On December 28, 1987, full payment of \$5,698.00 was made to ASL for Mr. and Mrs. Karl Dietzel. (Exhibits 6, 7 and 12; Affidavits of Jean Cox and Karl F. Dietzel; Admissions 29.)

31. By letter dated December 17, 1987, Mr. Dimitri Anninos supplemented the Application for Certificate of Financial Responsibility filed on April 21, 1987, and enclosed a revised 1988 cruise schedule for *Betsy Ross* which continued to reflect the proposed "Amazonian" cruises scheduled to depart Ft. Lauderdale, Florida, on February 4, March 3 and March 31, 1988. (Affidavit of Robert G. Drew, pp. 2, 3; Admissions 27, 28.)

32. By letter dated December 18, 1987, TIL forwarded to ASL a Cruise Booking Report that listed fifty-two passengers and two hosts who had been booked for the February 4, 1988, scheduled sailing of the *Betsy Ross*. (Affidavit of Eric Graves, pp. 4, 5; Admissions 31.)

33. By letter dated December 29, 1987, TIL forwarded to ASL a check in the amount of \$55,082.41 representing payment of fares for twenty-six of the passengers booked on the February 4, 1988, scheduled sailing of the *Betsy Ross*. An additional check for \$39,923.25 was forwarded by TIL to ASL on January 13, 1988, for deposits and fares for the February 4 and March 31, 1988, scheduled sailings of the *Betsy Ross*. (Affidavit of Eric Graves, p. 3; Admissions 32.)

34. By letter dated January 11, 1988, Pilar G. Armstrong, an account executive with Nova Travel USA, forwarded to ASL final payment of \$5,536 for Mr. and Mr. Robert Hart

for the March 3, 1988 cruise of *Betsy Ross* and indicated that Mr. and Mrs. Hart would be arriving at Ft. Lauderdale on March 2 and staying overnight at the Airport Hilton. (Admissions 30, Exhibit J.)

35. Pursuant to their Letter of Agreement with ASL dated July 17, 1987, TIL booked fifty passengers for the March 31, 1988, scheduled sailing of the *Betsy Ross*. (Affidavit of Eric Graves, pp. 4, 5; Admissions 36.)

36. In order to book passage on the *Betsy Ross*, passengers were required to deposit a portion of the fare. (Exhibit 1, p. 58 and Exhibit 5, p. 7.)

37. By letter dated January 25, 1988, TIL forwarded to ASL a check in the amount of \$14,592.09, representing payment for six additional passengers booked on the February 4, 1988, scheduled sailing of the *Betsy Ross*. (Affidavit of Eric Graves, p. 3; Admission 35.)

38. On or about January 13, 1988, Mr. Robert A. Peterson, an attorney representing ASL, informed Mr. Curt Ohlsson of the Federal Maritime Commission, by telephone that the 1988 sailing schedule of the *Betsy Ross* had been further revised due to a delay in the preparation of the vessel at the shipyard in Greece. (Affidavit of Robert G. Drew, p. 3; Admissions 33.)

39. By letter to Mr. Curt Ohlsson dated January 27, 1988, Mr. Robert A. Peterson confirmed the January 13, 1988, telephone conversation and indicated that the February 4, March 3 and March 31, 1988, cruises "are now planned to depart from a point in the Caribbean rather than from Ft. Lauderdale." (Exhibit 21; Affidavit of Robert G. Drew, pp. 3, 4; Admissions 34.)

40. Neither the February 4, nor the March 3, nor the March 31, 1988, scheduled sailings of the *Betsy Ross* was performed. (Affidavit of Eric Graves, pp. 5, 6; Admissions 37.)

41. By letter dated March 4, 1988, Mr. Arnold S. Egelund of ASL informed Mr. Curt Ohlsson of the Federal Maritime Commission that the scheduled itineraries of the *Betsy Ross* had been changed and the vessel would not be calling at any U.S. ports. (Affidavit of Robert G. Drew, p. 4; Admissions 38.)

42. Mr. Dimitri Anninos has had approximately twenty-five years experience in the international passenger vessel industry. (Exhibit 8, Part IV, Comment.)

43. Mr. Dimitri Anninos was Executive President of Traveline, Inc., 635 Madison Ave., New York, until 1983, while Traveline, Inc., had an arrangement Epirotiki Lines, Inc., and the owners of the passenger vessel *Jason* whereby Traveline, Inc., attempted to generate sufficient advance bookings to warrant bringing that vessel from Greece for cruises from U.S. ports. A Certificate (Performance) was issued for the *Jason* on November 5, 1982, but deposits were allegedly collected for these proposed U.S. cruises prior to the issuance of that Certificate. Mr. Anninos was advised of the statutory and regulatory requirements for passenger cruises from U.S. ports, and cautioned concerning those apparent violations, but no civil penalty enforcement was pursued in that case. All of the deposits were refunded when the cruise schedule of the *Jason* was cancelled. (Affidavit of Robert G. Drew, p. 5.)

44. During 1986, Mr. Dimitri Anninos was Chief Executive Officer of Epirotiki Lines, Inc., 551 Fifth Avenue, New York, U.S. agents for Hellenic Co. Overseas Cruise Vessels S.A., which was the operator of the *MV World Renaissance*. In the spring and early summer of 1986, Epirotiki Lines advertised cruises from U.S. ports on the *MV World Renaissance* on at least 14 occasions and collected fares and deposits of \$133,262.16 for 112 passages from U.S. ports prior to the issuance on July 11, 1986, of a Certificate (Performance) for that vessel. Mr. Anninos admitted to a Commission investigator in October, 1986, that he was aware of those activities. The Commission entered into a

\$10,000 settlement on June 3, 1987, with Hellenic Co. Overseas Cruise Vessels S.A. for those violations. The \$10,000 check was drawn on the account of Epirotiki Lines, Inc. (Affidavit of Robert G. Drew, p. 5; Affidavit of Christopher M. Kane, p. 3.)

45. Mr. Dimitri Anninos received advice and warnings from the Commission staff, including copies of the applicable statute and regulations, on several occasions during 1986. (Affidavit of Robert G. Drew, pp. 5, 6.)

46. On June 16, 1987, a warning letter was sent to Mr. Dimitri Anninos by Mr. Frederick W. Soencksen of the Commission's Office of Freight Forwarder and Passenger Vessel Operations cautioning Mr. Anninos that advertising or collecting deposits or fares for cruises from U.S. ports prior to receipt of a Certificate (Performance) was in violation of the applicable statute and regulations and could subject ASL to civil penalties. (Exhibit 18; Affidavit of Christopher M. Kane, p. 1; Affidavit of Robert G. Drew, p. 3.)

47. On July 7, 1987, Mr. Anninos responded to Mr. Soencksen's warning letter, assuring him "that neither National Transatlantic (sic) nor American Star (sic) has any intention of collecting any deposits or fares or of operating any vessel unless and until a Certificate (Performance) has been duly issued." (Exhibit 19; Affidavit of Robert G. Drew, p. 3.)

48. On October 16, 1987, Mr. Robert A. St. John, then director of the Commission's New York District Office, sent a letter to Mr. Dimitri Anninos requesting written confirmation that American Star Lines had neither advertised nor collected fares or deposits to that date and that American Star Lines did not intend to make any bookings or to accept fares or deposits from passengers for *Betsy Ross* cruises from U.S. ports. (Exhibit 15; Affidavit of Christopher M. Kane, p. 3.)

49. Mr. Anninos responded to Mr. St. John's letter on October 23, 1987, confirming that ASL "will not make any bookings nor accept any fares or deposits from passengers seeking to embark aboard the vessel *Betsy Ross* at a U.S. port until it has been issued a Certificate (Performance) by the Federal Maritime Commission." (Exhibit 15; Affidavit of Christopher M. Kane, p. 3.)

50. Subsequent to the cancellation of the "Amazonian" cruises, Respondents did not promptly refund passenger deposits and fares, and in some cases, have still not made such refunds. (Exhibits 6, 7, 12 and 20; Affidavit of Eric Graves, p. 6; Affidavit of Jean Cox, p. 2; Affidavit of Karl F. Dietzel, pp. 2, 3; Affidavit of Christopher M. Kane, pp. 3, 5.)

51. As of January 31, 1990, TIL was still owed almost \$83,000 in deposits and fares from ASL which TIL had refunded to passengers. (Affidavit of Eric Graves, p. 6.)

52. Prior to receiving partial reimbursement of \$75,000 from Respondents on March 21, 1988, TIL was tendered two refund checks from ASL on February 23, 1988, and March 4, 1988, respectively, each for \$117,505.66, and each of which was rejected by the bank for insufficient funds. After several more months of Dimitri Anninos' failure to return calls or respond to letters, TIL filed a civil suit against ASL on August 29, 1988. (Exhibit 13; Affidavit of Eric Graves, p. 6.)

53. The travel agent representing Mr. and Mrs. Karl Dietzel, two passengers who were booked on the March 3, 1988 cruise of *Betsy Ross*, made at least thirteen cross-country phone calls to ASL in an attempt to obtain refunds for these passengers. Mr. and Mrs. Dietzel received their refunds approximately four months after payment to ASL. Their refund check crossed in the mail with Mr. Dietzel's informal complaint to the Commission. (Exhibits 6, 12, 20; Affidavit of Jean Cox, p. 1.)

54. Other passengers who booked cruises from foreign ports on the *Betsy Ross* have also been unable to obtain refunds from ASL. (Affidavit of Christopher M. Kane, pp. 3, 5.)

Ultimate Findings of Fact

55. Each of the Respondents was involved in arranging, offering, advertising and providing passage on a vessel having accommodations for fifty or more passengers at United States Ports without first establishing their financial responsibility or filing a copy of a bond or other security with the Commission, all in violation of existing law and regulations.

56. The violations warrant the issuance of a cease and desist order and the assertion of penalties of \$26,200 against each of the Respondents.

Conclusions and Findings

1. Violation of Public Law 89-777

Public Law 89-777, 46 App. U.S.C. 817e provides that:

No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or in lieu thereof a copy of a bond or other security, in such form as the Commission, by rule or regulation may require and accept, for identification of passengers for non-performance of the transportation.

The Commission's regulations at 46 C.F.R. § 540.3 further provide:

No person in the United States may arrange, offer, advertise or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.⁹

The Commission's regulations (46 C.F.R. § 540.2(a) state in pertinent part:

(a) *Person*, includes individuals, corporations, partnerships, associations and other legal entities existing under or authorized by the laws of the United States or any state thereof . . . or the laws of any foreign country.

Here, there is no question but that each of the Respondents has violated the law and regulations. Indeed, it has been so found as a fact.¹⁰ The record clearly shows that each Respondent had a hand in the illegal activities. Further, Hearing Counsel correctly states that, "the statute and these regulations contemplate that more than one "person" may be required to obtain a Certificate (Performance) and that more than one person may be held accountable for violating the statute and the regulations." In this regard it should be noted that although there are three Respondents, the individual Respondent controlled and managed the two corporate Respondents. All of their activities were directed to one end, i.e., to arrange, advertise and collect funds relating to the cruise in question. In doing so each violated the law and each is subject to penalty.

2. Penalties

Section 3(c) of Public Law 89-777 provides that:

⁹46 C.F.R. § 540.4 sets out the procedures for establishing financial responsibility.

¹⁰See *Terry Marler and James Beasley dba Titanic Steamship Line - Possible Violations of Section 3(a) of Public Law 89-777*, 22 S.R.R. 359 (I.D. 1983), 22 S.R.R. 798 (F.M.C. 1984), which sets out the purpose of Public Law 89-777, and *Titanic and Wall Street Cruises Inc.*, 15 F.M.C. 140, 12 S.R.R. 950 (1972) for discussion of the limits on the scope of the statute's prohibition against advertising. See Also *Windjammer Cruises Inc. and Windjammer Cruises, Ltd.*, 19 F.M.C. 114 (I.D. 1976); 19 F.M.C. 112 (F.M.C. 1976) which, respecting certification, distinguishes between section 2 of P.L. 89-777, dealing with financial responsibility for death or injury to passengers, and section 3 of Public Law 89-777, dealing with financial responsibility for non-performance.

Any person who shall violate this section shall be subject to a civil penalty of not more than \$5,000 in addition to a civil penalty of \$200 for each passage sold. . . .

The record here indicates that at least 106 passages were sold for the cruise (F.F. 30, 32, 34, 35). That being so the maximum penalty that may be assessed is $\$200 \times 106 = \$21,200 + \$5,000$, or \$26,200. The question that now arises is what amount of penalty should be assessed. Section 505.3 (46 C.F.R. § 505.3) of the Commission's rules is as follows:

(b) *Criteria for determining amount of penalty.* In determining the amount of any penalties assessed, the Commission shall take into account the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with the Commission's rules and regulations and the applicable statutes. The Commission shall also consider the respondent's degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires.

When one looks at the nature, circumstances, extent and gravity of the violation committed in this case there are no factors which serve to mitigate the amount of the penalty. The violations were directed by an individual who had already received specific warnings from the Commission (F.F. 43-49). The violations were not the result of oversight or inattention. Rather, they were deliberate acts knowingly engaged in and knowingly violative of the law and regulations. Not only that, this is not just some technical violation of paperwork requirements. It resulted in passengers being stranded by cancellation of the cruise, resulted in financial injury requiring some passengers to bring suit to recover deposits and fares, and because some of the collected monies have not been returned, resulted in the Respondents being unjustly enriched. So here one cannot find reason to lessen penalties when he examines the nature and gravity of the violation.

The same is true where one considers the deterrent aspect of the penalty. To begin with prior experience in settling another similar case involving a passenger vessel has had no effect on the respondents, especially on the individual respondent. Further, the Respondents have been completely uncooperative in this proceeding as the Preliminary Matters' section of this decision indicates. Not only did they refuse to produce documents under subpoena but they consistently refused to cooperate as the case progressed. While they have continually sought delays which have been granted, in essence, they have offered no defense in this proceeding. Their approach to the resolution of the violations has been quite cavalier. To deter future similar conduct on their part and to put others so inclined on notice, the penalties have not been reduced.

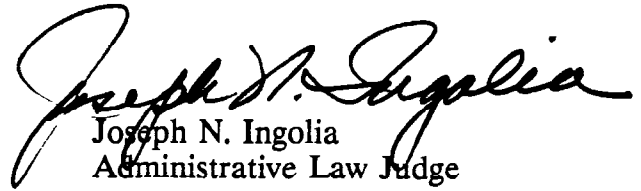
Wherefore, it is held that penalties be assessed against each of the Respondents in the amount of \$26,200.

3. Cease and Desist Order

Hearing Counsel has requested that a cease and desist order be issued and directed at all of the Respondents, "to forestall future violations and provide a rapid mechanism for enjoining" any prohibited activity. It properly notes that, "such an order would also assist in alerting the travel industry and the public that they should be wary of any future cruise offerings in which the Respondents may be participating."

Wherefore, it is hereby ordered that the Respondents American Star Lines, Inc., National Transatlantic Lines of Greece S.A. and Dimitri Anninos, both individually and jointly, cease and desist from advertising, or otherwise offering, arranging or providing passage on any passenger vessel which accommodates fifty or more passengers, including any collection of any deposits or fares, either directly or indirectly on their own behalf or

through agents, until each and/or all of them complies with the financial responsibility requirements of section 3 of Public Law 89-777 and the pertinent Commission regulations.


Joseph N. Ingolia
Administrative Law Judge

Washington, D. C.
August 30, 1990

(S E R V E D)
(October 3, 1990)
(FEDERAL MARITIME COMMISSION)

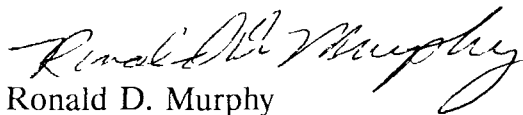
FEDERAL MARITIME COMMISSION

DOCKET NO. 89-11

AMERICAN STAR LINES, INC.
NATIONAL TRANSATLANTIC LINES OF GREECE S.A.,
AND DIMITRI ANNINOS
POSSIBLE VIOLATIONS OF PASSENGER VESSEL
CERTIFICATION REQUIREMENTS

NOTICE

Notice is given that no exceptions were filed to the August 31, 1990, initial decision in this proceeding and the time within which the Commission could determine to review has expired. No such determination has been made and accordingly, that decision has become administratively final.


Ronald D. Murphy
Assistant Secretary